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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/650,616  | 08/28/2003  | Gregory Schriner     | 15730.1900          | 8301             |
| 48236   | 7590        | 08/24/2005           | EXAMINER            |                  |
| SNELL & WILMER, LLP<br>ONE ARIZONA CENTER<br>400 E. VAN BUREN<br>PHOENIX, AZ 85004-2202 |             |                      | ELKINS, GARY E      |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |
|   |             |                      | 3727                |                  |

DATE MAILED: 08/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/650,616             | SCHRINER, GREGORY   |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Gary E. Elkins         | 3727                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 August 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____   |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>20040601</u> .  | 6) <input type="checkbox"/> Other: ____                                     |

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the tuck flap slots as set forth in claim 6 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. It is noted that the element "66" in the specification is indicated as tuck flap slots. However, the only element "66" shown in the drawing is directed to the manufacturer's glue flap at one end of the blank.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Art Unit: 3727

2. The drawings are objected to because fold lines and cut lines within the blanks (figs. 1 and 5) are both shown as solid lines. Fold lines within a blank should be shown differently from separations to facilitate understanding of how the blank is folded to obtain the carton as shown in the other figures. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

3. The disclosure is objected to because of the following informalities: In section 23 of the specification, “66” is described as both “tuck flap slots” and “tuck flaps”. Also, the statement on page 6 in section 23 that the tuck flaps 64 are inserted into tuck flaps 66 is unclear.

Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Kidd. Kidd discloses a box assembly including top flap 8, bottom flap 5, four vertical side walls, an opening 13 within the top flap capable of receiving a product of like size to the opening, e.g. a bottle cap and frictionally securing the product within the opening, and a handle 20, 30 extending through the enclosed area of the container and through the top flap as claimed.

6. Claims 1, 2 and 5 and claim 6, as best understood in view of paragraphs 1 and 3 above, are rejected under 35 U.S.C. 102(b) as being anticipated by Mode. Mode discloses a box assembly including top flap 34, bottom flap 62, four vertical side walls, an opening 46 or 48 within the top flap capable of receiving a product of like size to the opening and frictionally securing the product within the opening, and a handle 108 extending through the enclosed area of the container and through the top flap as claimed. With respect to claim 6, Mode discloses a tuck flap 38 connected to top flap 34 which engages in a slot formed between flaps 114 and 116 to secure the top closure.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

Art Unit: 3727

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-5, 7 and 8, and claim 6 as best understood in view of paragraphs 1 and 3 above, are rejected under 35 U.S.C. 103(a) as being unpatentable over Monealegre in view of either Farrington or Cote. Montealegre discloses all structure of the claimed box assembly except a product opening in at least one of the top flaps and, with respect to claim 3, a second product opening in a second top flap. Each of Farrington and Cote teaches that it is known to form a pendant handle carton with product openings in the top flaps adjacent the sides of the central handle. It would have been obvious to make the top flaps in Montealegre with product openings as taught by either Farrington or Cote to allow packaging of products having a greater height than the height of the carton in Montealegre and/or to save material by allowing a carton of lesser height than the height of the contents to be packaged to be made.

9. Claims 1-5 and 7-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brulin in view of either Farrington or Cote. With respect to claims 1-5, 7 and 8, Brulin discloses all structure of the claimed box assembly except a product opening in at least one of the top flaps and, with respect to claim 3, a second product opening in a second top flap. Each of Farrington and Cote teaches that it is known to form a pendant handle carton with product openings in the top flaps adjacent the sides of the central handle. It would have been obvious to make the top flaps in Brulin with product openings as taught by either Farrington or Cote to allow packaging of products having a greater height than the height of the carton in Brulin and/or to save material by allowing a carton of lesser height than the height of the contents to be packaged to be used. With respect to claims 9-15, the blank of Brulin (fig. 5) evidences all structure of the claimed cardboard or blank except first and second product openings within the top flaps (16, 16') in

Art Unit: 3727

quadrants (0, 3) and (2, 3). Each of Farrington and Cote teaches formation of a pendant handle carton with product openings in top flaps adjacent the sides of the central handle. It would have been obvious to make the top flaps in quadrants (0, 3) and (2, 3) of the blank in Brulin with product openings as taught by either Farrington or Cote to allow packaging of products having a greater height than the height of the carton formed from the blank in Brulin and/or to save material by allowing a carton formed from the blank to be of a lesser height than the height of the contents to be packaged to be made.

### *Conclusion*

The remaining cited prior art is illustrative of the general state of the art.

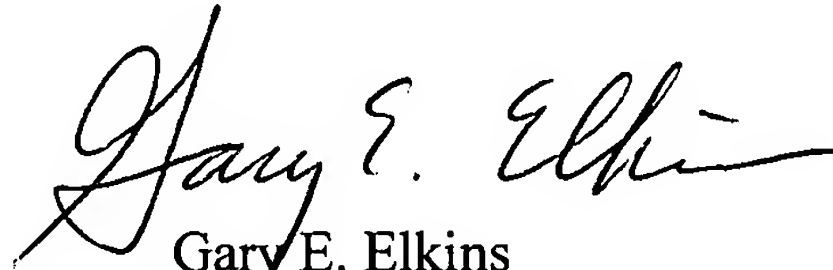
In order to reduce pendency and avoid potential delays, Technology Center 3700 is encouraging FAXing of responses in Office Actions to (571)273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by Applicants who authorize charges to a PTO deposit account. Please identify the Examiner and art unit at the top of your cover sheet.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. Also, copies of an office action or other file information may be obtained from the Private PAIR system. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions regarding access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Art Unit: 3727

Any inquiry concerning this communication or earlier communication from the Examiner should be directed to Gary Elkins at telephone number (571)272-4537. The Examiner can normally be reached Monday through Thursday.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Mr. Nathan Newhouse can be reached at (571)272-4544.

  
Gary E. Elkins  
Primary Examiner  
Art Unit 3727

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22 August 2005